



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/163517

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on February 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Professional Services Group (PSG) correctly denied the Petitioner's application for kinship care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Danielle Green, Kinship Assessor, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On November 25, 2014, PSG sent the Petitioner a notice indicating that her kinship care benefits would be ending because she did not cooperate with the annual reassessment/application process. (Exhibit 2, pgs. 12-13)

3. The Petitioner filed a request for fair hearing on December 5, 2014. (Exhibit 2, pg. 11)
4. Also on December 5, 2014, the Petitioner filed a new application for kinship care benefits for SE (herein after referred to as “the child”). Petitioner is the child’s paternal great aunt. (Exhibit 2, pg. 5)
5. On December 10, 2014, the Division of Hearings and Appeals dismissed the appeal, because the Petitioner withdrew her request for hearing. (Exhibit 2, pg. 9)
6. On December 23, 2014, [REDACTED] went to the Petitioner’s home to completed a home visit. (Exhibit 2, pg. 5; testimony of [REDACTED])
7. Petitioner reported to [REDACTED] that the child’s sister had returned to the care of her nephew, their putative father; that the nephew had employment and that the child remained in the Petitioner’s care, because paternity had not been legally established for her, yet. (Testimony of [REDACTED])
8. The child’s putative father does not have any alcohol or other drug issues, has no mental health issues and has no history of involvement with child protective services. (Testimony of Petitioner)
9. On January 7, 2015, the PSG sent the Petitioner a notice indicating that her application for kinship care benefits was denied. (Exhibit 2, pgs. 3-4)
10. The Petitioner filed another request for fair hearing that was received by the Division of Hearings and Appeals on January 28, 2015. (Exhibit 1)

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. Wis. Stat. §48.57(3m)(am)

A kinship care relative, means a relative other than a parent. Wis. Stat. §48.57(3m)(a)2. There is insufficient evidence in the record to support a finding that the child in question is Petitioner’s relative. It is undisputed that the paternity of the father has not been adjudicated and that his name is not on the child’s birth certificate. Consequently, Petitioner is not eligible to receive kinship care benefits for the child.

Even if the record did support a finding that the Petitioner was, in fact, the child’s great aunt, this case still does not meet approval criteria.

To be eligible for kinship payments, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

Because Petitioner does not yet have guardianship of the child, she is not eligible to receive Kinship under Wis. Stats. §48.57(3n).

Under Wis. Stats. §48.57(3m)(am)(1-5):

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$220 per month to a kinship care relative who is providing care and maintenance for a child if **all** of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a

need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*§48.57(3m)(a)2(am), Wis. Stats.
Emphasis Added*

In other words, there must be **both** a need for placement with the kinship relative and a risk that the child would be at risk of being abused, abandoned or neglected, if left in the care of the parent.

The Need for Placement and the Best Interests of the Child

The Wisconsin Administrative Code, at *§DCF 58.10(1)*, describes the “need” for placement as follows:

...The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

- a) The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
- b) The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c) The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
- d) The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

The Petitioner testified credibly, that the child’s father is currently living with a girlfriend and that they do not have room in their apartment for another child. Thus, the child might not have adequate shelter, if sent to live with her father. Thus, per the criteria set forth above, Petitioner has established that there is a need for the child to be in Petitioner’s care and that it would be in the child’s best interests.

The risk that NLE would meet the criteria under Wis. Stats. §48.13

Wis. Stat. §48.13, which provides for jurisdiction over children alleged to be in need of protection or services and states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10M) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

The Petitioner testified the child's father does not have any alcohol or other drug issues and that he does not have any mental health issues. Petitioner testified that the child's father has not been the subject of an investigation with child protective services. There is no evidence in the record that the girlfriend, with whom the child's father lives, would pose a threat to the child. Petitioner testified that the child would be living with her father, if he could get an apartment with enough room. Under such circumstances, it is found that the child is not at risk of being a child in need of protection or services, meaning she is not at risk of abuse, neglect or abandonment.

While the child might not have adequate shelter if forced to live with her father, that is for no reason other than poverty/lack of income. That is not enough to find a child to be at risk of abuse or neglect.

Consequently, PSG correctly denied the Petitioner's application for kinship care benefits.

CONCLUSIONS OF LAW

PSG correctly denied the Petitioner's application for kinship care benefits, because it is not clear that the Petitioner is a relative of the child and because the child is not at risk of becoming a child in need of protection or services.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of February, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 25, 2015.

Professional Services Group - PSG
DCF - Kinship Care
DCF - Kinship Care